

**DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811**

October 21, 2010

**NOTICE OF MODIFICATIONS TO TEXT OF
PROPOSED REGULATIONS**

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the Department of Personnel Administration is providing notice of changes made to proposed regulation Sections 599.960, 599.963 and 599.965 which is the subject of a regulatory hearing which was held on October 19, 2010. These changes are in response to changes in the Federal Motor Carrier Act Regulations which became effective October 1, 2010.

If you have any comments regarding the proposed changes, DPA will accept written comments between October 25, 2010 and November 12, 2010. All written comments must be submitted to the Department no later than 5:00 p.m. on November 12, 2010, and addressed to:

Sydney Perry, Manager
Substance Abuse Testing Program
Department of Personnel Administrations
1515 S Street, North Building, Suite 400
Sacramento, CA 95811

All written comments received by November 12, 2010, which pertain to the indicated changes will be reviewed and responded to by the Department's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

**TITLE 2, ARTICLE 29, SUBSTANCE ABUSE
DEPARTMENT OF PERSONNEL ADMINISTRATION**

Text of Modified Regulations

The Department has illustrated changes to the original text in the following manner: regulation language originally proposed is underlined; deletions from the language originally proposed are shown in strikeout using a " – "; and additions to the language originally proposed are double-underlined.

599.963 Testing Process and Standards

Substance testing under this Article shall comply with the standards and procedures specified in the Federal Motor Carrier Safety Regulations, Title 49, Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs, Subparts A – N, P and Q, including any amendments, to the Federal Regulations, and the following standards and procedures:

(a) The drug testing process shall be one that is scientifically proven to be at least as accurate and valid as urinalysis using an immunoassay screening test, with all positive screening results being confirmed utilizing gas chromatography/mass spectrometry before a sample is considered positive. The alcohol testing process shall be one that is scientifically proven to be at least as accurate and valid as ~~(1) urinalysis using an enzymatic assay screening test, with all positive screening results being confirmed using gas chromatography before a sample is considered positive or (2) breath sample testing using breath alcohol analyzing instruments which meet the standards specified in the Federal Motor Carrier Safety Regulations, Title 49 of the Code of Federal Regulations, Part 40, Subpart K, Sections 40.229 and 40.231. breath alcohol analyzing instruments which meet the State Department of Health Services standards specified in Title 17, Division 1, Chapter 2, Subchapter 1, Group 8, Article 7, Sections 1221.2 and 1221.3 of the California Code of Regulations.~~

(b) Substances to be tested for shall include the following:

(1) Amphetamines and Methamphetamines

Amphetamine
Methamphetamine
MDMA
MDA
MDEA

(2) Cocaine

(3) Marijuana/Cannabinoids (THC)

(4) Opiates (narcotics)

Codeine

Morphine

6-AM (heroin)

(5) Phencyclidine (PCP)

(6) Barbiturates

(7) Benzodiazepines

(8) Methaqualone

(9) Alcohol

In addition, with the approval of the department testing may be conducted for other controlled substances when the appointing power reasonably suspects the use of other substances.

(c) After consulting with expert staff of the laboratory or laboratories selected to perform the testing under this Article, the department shall set test cutoff levels that will identify positive test samples while minimizing false positive test results.

(d) Notwithstanding (c), the Department shall use cutoff levels for substances listed in (b)(1) through (5) as established in SAMHSA, Mandatory Guidelines for Federal Workplace Drug Testing Programs, Subpart B, Section 2.4, Part (e) and Part (f), ~~59 FR 29916 dated June 9, 1994, and 62 FR 51118 dated September 30, 1997~~ "69 FR 19644 dated April 13, 2004" including any amendments to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. For alcohol (b)(9) the Department shall use the Federal Motor Carrier Safety Administration alcohol concentration cutoff level as described in Part 382 - Controlled Substances and Alcohol Use and Testing, Section 201, 49 CFR dated ~~July 25, 1995~~ "October 1, 2004" including any amendments in Part 382 – Controlled Substances and Alcohol Use and Testing.

(e) Test samples will be collected in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic or in another setting approved by the department on the basis that it provides for at least an equally secure and professional collection process. The department shall specify procedures to ensure that true samples

are obtained.

(f) The Department shall use chain of custody procedures ~~similar to those used as~~ specified by SAMHSA to ensure that a strict chain of custody is maintained for the sample from the time it is taken, through the testing process, to its final disposition. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or sample is handled or transferred and identifying every individual in the chain of custody.

(g) Drug tests shall be performed by a commercial laboratory that is certified by SAMHSA ~~(pursuant to the Mandatory Guidelines for Federal Workplace Drug Testing Program, including any amendments to the Mandatory Guidelines for Federal Workplace Drug Testing Programs, "Subpart C, 69 FR 19644 dated April 13, 2004". Federal Register, Vol. 53 No. 69, or which meets the standards used by the College of American Pathologists (CAP) to accredit laboratories for forensic urine drug testing (Standards for Accreditation, Forensic Urine Drug Testing Laboratories, College of American Pathologists).~~

(h) For random substance testing under this article, the department will use a scientifically valid method such as a random number table or a computer based random number generator that is matched with Social Security Numbers, payroll identification numbers, or other comparable identifying numbers. A number not to exceed thirty-five percent of managers, supervisors, and exempt employees who are subject to random substance testing will be randomly selected for substance testing annually.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code.
Reference: Section 19261, Government Code.

599.965 Medical Review Officer

Subject to the Department of Personnel Administration approval, each appointing power shall designate one or more Medical Review Officers who shall be licensed physicians who meet federal SAMHSA requirements as described in ~~59 FR 29908~~ “69 FR 19644”, Mandatory Guidelines For Federal Workplace Drug Testing Programs, Subpart A, Section 1.2 Definitions, and Subpart B, Section 2.6, dated June 9, 1994 “April 13, 2004” including any amendments to the Mandatory Guidelines For Federal Workplace Drug Testing Programs, to have the appropriate medical training to interpret and evaluate an individual’s confirmed positive test result, to receive test results from the laboratory. Upon receiving results, the Medical Review Officer shall:

- (a) Review the results and determine if the standards and procedures required by this Article have been followed.
- (b) For positive results interview the affected employee to determine if factors other than illegal drug use may have caused the result.
- (c) Consider any assertions by the affected employee of irregularities in the sample collection and testing process.
- (d) Based on the above, provide a written explanation of the test results to the appointing power or his/her designee. The employee shall also receive a copy of this explanation.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code.
Reference: Section 19261, Government Code.